

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

AUG 11 2004

OFFICE OF
MANAGING DIRECTOR

Jeffrey H. Olson, Esquire
Paul, Weiss, Rifkind, Wharton
& Garrison LLP
1615 L Street, NW
Washington, DC 20036-5694

Re: Iridium Constellation LLC
Petition for Waiver and Refund of FCC Application Fee
Fee Control Number 0301218210004001

Dear Counsel:

This letter responds to your January 17, 2003 request (Request) that we refund the \$24,270 application fee submitted on the same date with the request by Iridium Constellation LLC (Iridium) to extend the time within which to file a required application for modification of its license to address "end-of-life disposal."¹ For the reasons set out below, we grant the request.

Background

As required in the *Order & Authorization*, and as a condition to the authorization, Iridium was to file not later than January 17, 2003, "an application for modification of Iridium's license to address end-of-life disposal." Instead of filing the required modification application, Iridium sought permission to extend the time in which to file the required modification. Iridium, asserting uncertainty as to the correct fee required for such a request, and asserting reliance on informal advice provided by International Bureau staff, tendered \$24,270, which is the required fee for an application to apply for a modification of the nongeostationary orbit (NGSO) system license.²

Iridium, in its Request, asserts two grounds on which the Commission should refund the entire fee. First, Iridium asserts that there is no rational basis for any fee because the request for an extension "cannot fairly be characterized as an application for modification of license." And, second, Iridium suggests that the fee paid, \$24,270, is "completely unrelated to the level of effort" that the Commission will expend to review the extension request.³ For the reasons set out below, we agree that in this case no fee was required.

¹ See *Order and Authorization*, Iridium LLC, Concerning Use of the 1990-2025/2165 MHz and Associated Frequency Bands for a Mobile Satellite System, 16 FCC Rcd 13778 (IB, 2001) (*Order & Authorization*). The required information in the modification was to be filed not later than six months prior to the completion of the critical design review (CDR) milestone, which was determined to be July 17, 2003. See ¶¶ 27 & 34

² See 47 U.S.C. § 158(g), Common Carrier Services, Item 22; 47 C.F.R. § 1.1107.10.c.

³ Request at 2-3.

Discussion

The Bureau authorized Iridium to use spectrum in the 2 GHz band to provide Mobile-Satellite Service (MSS).⁴ That authorization, however, was conditioned specifically on Iridium choosing a Selected Assignment within the frequency bands, launching one satellite into its authorized orbit, and “[n]o later than six months prior to the Critical Design Review milestone, Iridium, LLC must file an application to modify this license to address end-of-life disposal of its satellites, . . .”⁵ Iridium did not seek to extend the Critical Design Review milestone, but only requested an extension of time to file the required modification application. Application fees are ordinarily due at the time the application is filed. *See Establishment of a Fee Collection Program*, 2 FCC Rcd 947, ¶ 40 (1987). Although the governing Fee Schedule requires a fee of \$24,270 for the modification application, it does not provide a specific fee for an extension of time to file a modification application. In this case, we find that the request for an extension of time to file the required modification was separate from the subsequent modification such that it did not require the payment of the fee.

We are mindful that the Commission’s fee schedules are congressionally mandated, and the statutory fee schedule specifies under the category for space stations a fee to modify a station license. 47 U.S.C. § 158(g), Common Carrier Services, Item 22.d. In implementing 47 U.S.C. § 158, the Commission stated that “[t]he Schedule of Charges created statutory fees that could only be changed in accordance with the statute or through the passage of new legislation.” *Report & Order, Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 2 FCC Rcd. 947, 948 (1987) (*Report & Order, Fees*). Accordingly, absent congressional action, the Commission will not purposely add to or delete from the statutorily established categories of feeable items. In that regard, the Commission later amended certain rules to implement section 3001 of the Omnibus Budget Reconciliation Act of 1989, which adopted the amended fees “exactly as approved by Congress and the President . . . [, which resulted] from a determination by the Congress that the fees represent a fair approximation as to how the Commission’s cost should be distributed.”⁶ In this instance, however, the modification fee was premature.

Because we are refunding the application fee, we need not address Iridium’s second stated ground for granting a full refund, *i.e.*, that the fee does not reflect the amount of actual effort expended by the Commission on a particular application or type of application. Even so, because the issue has broad interest, we note that the view was considered and rejected when the Commission reviewed its rules governing implementation and collection of fees required by the

⁴ *Order & Authorization* ¶ 1.

⁵ *Id.*, ¶ 34.

⁶ *Memorandum Opinion and Order, Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Reconciliation Act of 1989*, FCC 90-63, 5 FCC Rcd 3558, 3574 (1990).

Consolidated Omnibus Budget Reconciliation Act of 1985, 47 U.S.C. § 158, Pub.L. No. 99-272.
The Commission noted:

[I]n a number of situations, parties have opined that a given fee in no way reflects the amount of actual effort expended by the Commission on a particular application or type of application. In this regard, it is important for the public to understand that the amount of the fee represents the Commission's estimate, accepted by Congress, on the average cost to the Commission of providing the service. Conference Report at 423. As an average, there will be individual situations in which the actual cost may be more or less. It is not our intention to make individualized determinations of the "appropriate fee." Rather, except in unusual cases in which the public interest requires otherwise, we will levy the fee as determined by Congress. See 47 U.S.C. § 158(d)(2); 47 C.F.R. § 1.1115.

Memorandum Opinion And Order, Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, 3 FCC Rcd. 5987 (1988), 1988 WL 489299 (F.C.C.); *Report & Order, Fees*, 2 FCC Rcd. at 949 ("the Commission's processing costs were but one factor in the rough calculus that resulted in the legislated fees").

Conclusion

Accordingly, for the reasons stated, we grant Iridium's request for a full refund, and a check in the amount of \$24,270 made payable to the maker of the original check will be sent to you at the earliest practicable time. If you have any questions concerning this letter, you may write me at the Commission or call the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,



 Mark A. Reger
Chief Financial Officer

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January 17, 2003

By Hand

Mr. Andrew S. Fishel
Managing Director
Office of the Managing Director
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Iridium Constellation LLC
Petition for Waiver and Refund of FCC Application Fee

Dear Mr. Fishel:

On January 17, 2003, Iridium Constellation LLC ("Iridium"), licensee of a 2 GHz nongeostationary orbit ("NGSO") Mobile Satellite Service ("MSS") system, filed a request for an extension of time within which to provide additional information to the Commission regarding its end-of-life deorbit plan. Pursuant to the *Order and Authorization*¹ granting Iridium's license, that additional showing was required to be filed by January 17, 2003.

¹ *Iridium LLC, Order and Authorization*, 16 FCC Rcd. 13778 (Int'l Bur. 2001) ("Order and Authorization"). In *Space Station System Licensee, Inc., Memorandum Opinion, Order and Authorization*, 17 FCC Rcd. 2271, ¶¶ 13-30 (Int'l Bur. 2002), the Commission approved the assignment of the license from Iridium LLC (an entity ultimately controlled by Motorola) to Iridium. See *id.* at ¶¶ 50-51.

The staff of the International Bureau (the "Bureau") informally advised the undersigned counsel that the above-described request for an extension of time should be filed in the form of an application to modify the subject license, despite the fact that no changes (technical or otherwise) to any aspect of the licensed satellite system are proposed, nor have any changes been sought with respect to the construction, launch, and entry-into-service milestones.

Out of an abundance of caution, Iridium followed the Bureau's advice regarding the format to be followed in seeking the extension of time, and therefore tendered with the filing the fee specified by Section 1.1107 of the Commission's Rules for applications to modify NGSO system licenses (\$24,270).² However, pursuant to Sections 1.1117 and 1.1113 of the Commission's Rules, and for the reasons set out below, Iridium requests a refund of that fee.³

Section 1.1117(a) of the Commission's Rules provides that fees paid to the Commission may be waived where good cause is shown and where waiver would promote the public interest.⁴ Under Section 1.1113(a)(5) of the Commission's Rules, if a fee waiver is granted, the Commission will issue a refund.⁵

In the instant case, there is simply no rational basis for imposing any fee, let alone one of the magnitude involved here. First, as noted above, Iridium's extension request cannot fairly be characterized as an application for modification of license.⁶ To treat Iridium's request as such elevates form over substance to an irrational degree. On

² 47 C.F.R. § 1.1107. Photocopies of the FCC Form 159 and check submitted by Iridium with its extension request are attached hereto.

³ 47 C.F.R. §§ 1.1113, 1.1117.

⁴ 47 C.F.R. § 1.1117(a). *See also* 47 U.S.C. § 158(d)(2) (The Commission may waive payment of an application fee "in any specific instance for good cause shown, where such action would promote the public interest.").

⁵ 47 C.F.R. §§ 1.1113(a)(5).

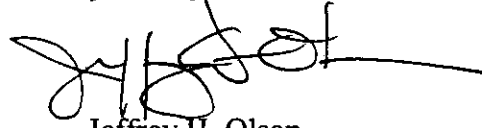
⁶ Indeed, the Bureau has previously allowed satellite licensees to seek extensions of time to fulfill conditions of license by filing a petition (rather than an application) and without paying a filing fee. *See NetSat28 Co., Memorandum Opinion and Order*, 16 FCC Rcd. 11025 (Int'l Bur. 2001) (granting extension request); *R/L DBS Co., Memorandum Opinion and Order*, 16 FCC Rcd. 9 (Int'l Bur. 2000) (same). Moreover, substantive conditions on satellite licenses have been waived without the requirement of a formal modification application and associated fee. *See SpaceData Int'l LLC, Order*, DA 03-60 (Int'l Bur., Sat. Div., rel. Jan. 10, 2003); *SpaceData Int'l LLC, Order*, 16 FCC Rcd. 18041 (Int'l Bur., Sat. Div. 2001).

this ground alone, the fee should be refunded, as the Commission's Rules do not specify a fee for extension requests of the sort filed by Iridium.

Second, the fee paid by Iridium is completely unrelated to the level of effort that will be required for the Commission's staff to review the extension request, contrary to the clear intent of Section 8 of the Communications Act.⁷ As noted above, Iridium paid a fee of \$24,270. However, all Iridium seeks is an extension of time in which to file additional information regarding certain aspects of its system. Consequently, staff evaluation of the Application will not require the sort of highly detailed and technical review that typically is necessary for processing modification applications in the NGSO satellite services. Granting Iridium's request for fee waiver and refund therefore will promote the public interest by ensuring that Iridium is not unduly burdened by a clearly excessive and unjustifiable fee.

For the reasons discussed above, Iridium respectfully requests a waiver and refund of the fee paid by Iridium in connection with its extension request. Please contact the undersigned if there are any questions concerning the instant request for fee waiver and refund.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. H. Olson', with a long horizontal line extending to the right.

Jeffrey H. Olson
Attorney for
Iridium Constellation LLC

Attachments

⁷ 47 U.S.C. § 158. *See also Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Report and Order*, 2 FCC Rcd. 947, ¶ 4 (1986) (the fees set forth in Section 8 are intended to be "based primarily on the Commission's cost of providing . . . regulatory services").

READ INSTRUCTIONS CAREFULLY BEFORE PROCEEDING (1) LOCKBOX # 358210	FEDERAL COMMUNICATIONS COMMISSION REMITTANCE ADVICE	Approved by OMB 3060-0589 Page No <u>1</u> of <u>1</u>
		SPECIAL USE FCC USE ONLY
SECTION A - PAYER INFORMATION		
(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card) Iridium Satellite LLC		(3) TOTAL AMOUNT PAID (U.S. Dollars and cents) \$24,270.00
(4) STREET ADDRESS LINE NO. 1 1600 Wilson Boulevard, Suite 1000		
(5) STREET ADDRESS LINE NO. 2		
(6) CITY Arlington		(7) STATE VA
		(8) ZIP CODE 22209-2594
(9) DAYTIME TELEPHONE NUMBER (include area code) 703-465-1000		(10) COUNTRY CODE (if not in U.S.A.)
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED		
(11) PAYER (FRN) 0004972790		(12) PAYER (TIN) 542000237
IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)		
(13) APPLICANT NAME Iridium Constellation LLC		
(14) STREET ADDRESS LINE NO. 1 1600 Wilson Boulevard, Suite 1000		
(15) STREET ADDRESS LINE NO. 2		
(16) CITY Arlington		(17) STATE VA
		(18) ZIP CODE 22209-2594
(19) DAYTIME TELEPHONE NUMBER (include area code) 703-465-1000		(20) COUNTRY CODE (if not in U.S.A.)
FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED		
(21) APPLICANT (FRN) 0007657059		(22) APPLICANT (TIN) 542023965
COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET		
(23A) CALL SIGN/OTHER ID S2325		(24A) PAYMENT TYPE CODE CGW
		(25A) QUANTITY 1
(26A) FEE DUE FOR (PTC) \$24,270.00	(27A) TOTAL FEE \$24,270.00	FCC USE ONLY
(28A) FCC CODE 1	(29A) FCC CODE 2	
(23B) CALL SIGN/OTHER ID		(24B) PAYMENT TYPE CODE
		(25B) QUANTITY
(26B) FEE DUE FOR (PTC)	(27B) TOTAL FEE	FCC USE ONLY
(28B) FCC CODE 1	(29B) FCC CODE 2	
SECTION D - CERTIFICATION		
(30) CERTIFICATION STATEMENT I, <u>Michael Deutschman</u> , certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.		
SIGNATURE <u><i>Michael Deutschman</i></u>		DATE <u>1/16/03</u>
SECTION E - CREDIT CARD PAYMENT INFORMATION		
(31)	MASTERCARD/VISA ACCOUNT NUMBER: <div style="border: 1px solid black; height: 20px; width: 280px;"></div>	EXPIRATION DATE: <div style="border: 1px solid black; height: 20px; width: 100px;"></div>
<input type="checkbox"/> MASTERCARD <input type="checkbox"/> VISA	I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described. SIGNATURE _____ DATE _____	



RAMIS ACCOUNT RECEIVABLES

Check Number Query Report

FEE Control Number : 0301218210004001

Customer FRN : 0004972790

FRN Name : Iridium Satellite LLC

Check Number : 178520000000

Receipt Amount : \$24,270.00

Date Received : 01/17/2003



RAMIS ACCOUNT RECEIVABLES

Receipt Processing Voucher

Header Details :

Fee Control Number : 0301218210004001

Customer FRN : 0004972790

Customer Name : Iridium Satellite LLC

CD Number : 560637 Date Received : 1/17/03

Type Collection : FEE CD Date : 1/21/03

Payment Type : CHECK Transaction Date : 1/17/03

Receipt Amount : \$24,270.00

Payor Details :

Payor FRN : 0004972790

Payor Name : IRIDIUM SATELLITE LLC

Payor TIN : <Null>

Address : 1600 WILSON BOULEVARD

SUITE 1000

ARLINGTON VA 222092594

Check No : 178520000000

Credit Card No : 0000000000000000

Transit Routing : 054000030

Line Details :

Seq	Applicant FRN	Applicant Name	App. TIN	Call Sign	Fcc Code 1	Fcc Code 2	PTC	Qty	Applied Amt
1	0007657059	IRIDIUM CONSTELLATION LLC	054202396	S2325			CGW	1	\$24,270.00

Total : \$24,270.00

AR012-A
3/04/2003
13:37:41

RAMIS ACCOUNTS RECEIVABLE - (C) DSG, Inc.
RECEIPTS DETAIL REPORT
SORTED BY TRANSACTION DATE, CD No., FEE CONTROL No.

PAGE 1
3/04/2003
13:37:41

CD No.	CD DATE	FEE CONTROL No.	FRN	PAYER NAME	TRANSACTION DATE	RECEIPT AMOUNT
560637	1/21/03	0301218210004001	0004972790	Iridium Satellite LLC	1/17/03	\$24,270.00

Seq: 1 Call Sign: S2325 FCC Code 1:
PTC: CGW QTY: 1 Applied Amt: FCC Code 2:
Applicant Name: IRIDIUM CONSTELLATION LLC
Address: 1600 WILSON BOULEVARD

Tin Number: 0542023965

Total: \$24,270.00